On the heuristic value of medieval chancery products

with special reference to papal documents *

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1.

It is now more or less generally recognized that semantic investigations into, and analyses of, medieval terms can play a most useful part as an ‹Erkenntnismittel› for the thought-processes and ideas manifesting themselves in the governmental actions of medieval rulers. The word is the only vehicle by which thought becomes a real, living and activating element: the employment of a particular term at a particular time in a particular context reveals symptomatically the concepts which prompt certain actions on the part of governments. Language is the means which enables the student of history to fathom the mental and ideological make-up of the ‹ gubernatores ›. In effect, the practical application of semantics is nothing else than internal morphology - a field of enquiry which has gained in the recent period more and more adherents. This avenue of research is especially valuable, rewarding and fruitful in the realm of investigations into constitutional and legal history, for in documents bearing upon the constitutional and legal questions the terms used had, as a rule, a very exact meaning which allow the researcher comparatively easy ingress into the mental and intellectual complexion of their draftsmen. But it is not only in these disciplines that the practical application of semantics for heuristic purposes promises rich rewards: it can, with equal success, be employed for the reconstruction of themes which are only remotely linked with the issue of documents, as, for instance, the constant designation of the pope in the Middle Ages as the ‹ indignus haeres › of St. Peter: a short

* Apologies are offered for the paucity of references and the shortcomings of this paper, but the author pleads as an extenuating circumstance ‹ brevitas temporis › in the composition.

formula indeed, which, upon closer analysis, contains a whole programme[1]; or another example is the ‹ staatsrechtliche › meaning attributable to the medieval designation of the medieval King as ‹ Rex Dei gratia › which, too, on closer inspection reveals a whole cluster of ideas compressed into the briefest possible formula[2].

In particular, medieval allegories show themselves to a quite extraordinary degree susceptible to the treatment on a semantic basis; and not far removed from this topic is the examination of symbols as ‹ Erkenntnismittel › of underlying thought processes. This has made great strides in recent years and taken the place of a barren antiquarianism: the antiquarian was satisfied with a purely descriptive and enumerative procedure - he was content with the description of a crown, of a ring, of a sceptre, of a sword, of a mitre, and so on, and he did not ask why it was employed, what was the essential meaning of the individual symbol, why the latter changed, in course of time, its form, why prayer-texts were composed at certain times and on certain occasions to bring out more clearly the meaning of the acquisition of the symbol, and so forth. ‹ Mut. mut. › the same observations can be made for liturgy which, too, has to a large extent shed its antiquarian trappings and been raised to the level of a respectable auxiliary historical science. Neither the term in documents, nor the imagery in the allegories, nor the liturgical object, has meaning ‹ per se ›, but was employed to take the place of thoughts held to be suitably expressed by a mere word, image or object. The mere antiquarian stops at the word, at the picture, and so on, but the searching historian begins with the word and uses it as a key to unlock otherwise hidden thought processes.

Within the field of practical semantics it is possible to establish two themes of government and law: each of them is clearly reflected in the terminology employed, ranging from the most abstract to every-day language. There is the ascending theme of government and law, according to which the bearer of all political and therefore of law-creating power is the people itself — hence also called populist conception — and it is from this broad base that power ascends or rises: the ‹ populus › elects or appoints certain of its members as officers and at the same time also defines and circumscribes their office. These (elected or appointed) members are representatives of the ‹ populus › and remain responsible to it: they in turn elect or appoint out of their midst members so that, starting from the broad base allegorically a pyramid of government comes into being, ending in the election (or appointment) of a supreme officer, who nevertheless remains responsible to the electing body. Whatever

1. For some details cfr. W. Ullmann *Leo I and the theme of papal primacy*, in « *Journal of Theological Studies* » (ns) 11 (1960) 25 ss.

2. For some observations on this and related topics cfr. W. Ullmann *Principles of Government and Politics in the Middle Ages* (London 1961) Part II: « The King ».

power is found in governmental organs is in the last resort traceable to the ‹ populus › itself.

The other theme of government and law is the descending one, according to which the bearer of power is not the ‹ populus ›, but on the contrary, one supreme being from which all governmental and therefore law-creating power descends. Allegorically speaking, here too is a pyramid, but at its apex is not an officer who owes his position to the ‹ populus ›, but one who is alleged to have been put into his place by divinity and one who possesses the sum-total of all power. Power is distributed or diffused d o w n w a r d s, so that in the last resort all power found b e l o w can be traced back to the supreme ‹ gubernator ›. Moreover, whilst in the ascending-populist scheme every member of the government is responsible to the ‹ populus ›, in the descending counterpart the supreme governor is not only not responsible to, but also is no member of, the ‹ populus › [3].

The two themes of government and law represent in fact rather clearly distinguishable and definable conceptions of sovereignty. Within the ascending framework it is the ‹ populus › who will always remain ‹ superior › and manifest its ‹ superioritas › in innumerable ways by exercising control over the elected officers; within the descending counterpart it is the supreme ‹ gubernator › who exercises the control d o w n w a r d s. The hall-mark of the former is the ‹ voluntas populi ›, of the latter the ‹ voluntas principis › which constitutes the material force of the laws. For the former the maxime « Lex est quod populus jubet et constituit » is valid [4], whilst for the latter it is: « iura sunt divinitus per ora principum promulgata » [5].

2.

For some inscrutable reasons these methodological analyses are not carried over into diplomatic or into any aspect of institutional or administrative history. And yet, it is not too precipitate an assertion to maintain that institutional history with its diplomatic appendices would equally well provide the same basis as an ‹ Erkenntnismittel ›, for it is in the actual administration of a public body which epitomizes, so to speak, in a concentrated form and manifests in a most concrete shape the ideas and thought-processes animating the

3. In many respects modern nomenclatures reflect the ancestry of our thought; cfr., for instance, Your Highness - Eure Hoheit - la Sua Altezza - the Subject - the Unter-tan - the Obrigkeit - the law-giver as contrasted with the law-maker; etc.

4. GAIUS *Institutiones* I, 1, 3.

5. GRATIAN XVI, 3 « Nemo »; XXV, 1 « Violatores », and 2 « Igitur ». Cfr. also AUGUSTINE in *Gratian, Dist.* VIII, 1: « Ipsa jura humana p e r imperatores et reges saeculi d i s t r i b u i t Deus generi humano ».

administrators, themselves the exponents and practical workmen of underlying governmental conceptions. After all, it is through the mechanics of the institutional machinery that a body in the public field can be made to work at all, and administration is simply the actual and concrete management of public matters in accordance with the ideas of the government itself. To separate the two, to separate government and administration as two independently working processes, and to consider each as being neatly separated from each other, is to run the risk of dividing an entity which, on principle, should not be divided. One can never fruitfully study or analyse administration without at the same time also studying and analysing the purposes which administration serves, and these purposes are not recognizable by studying merely the administrative process, but by studying the government to which administration is the servant. Administration is no more and no less than the channel through which government enters into the workaday world. Administration is thus a first-class avenue through which basic governmental conceptions can be recognized. And amongst administrative acts the documents assume, for obvious reasons, highest priority in this context. For they are the very life-blood of the government; they are the nerves and sinews radiating from the government as the centre.

It is therefore all the more strange that diplomatic has not yet adequately and fully seen in the documents themselves the means which reveal to the historical researcher the basic conceptions prompting the ‹ gubernatores ›. There are nevertheless some hopeful and promising beginnings. One has but to think of F. Dölger's fine examination of the imperial documents of Byzantium to realize what illuminating results can be gathered from an examination such as this [6]. An analysis of this kind shows better than any lengthy disquisition how and in what manner underlying governmental conceptions found their faithful reflexion in the documents: they are the most appropriate vehicles through which governmental thought can be recognized [7]. Their heuristic value cannot be exaggerated, because they distil in a highly practical manner the basic ideas of government: each individual item portrays the one or the other ideological feature of the Byzantine government, beginning with the writing material and ending with the reception of the roll by reverently kissing it [8]. Unfortunately, for the West no such exhaustive and instructive examination has been undertaken, and the explanation may well be that the

6. F. Dölger *Die Kaiserurkunde der Byzantiner als Ausdruck ihrer politischen Anschauungen*, in « *HZ* » 149 (1939) 229 ss.; and *Byzanz und die europäische Staatenwelt* (Ettal 1953) 9 ss.

7. Cfr. Dölger *Die Kaiserurkunde* cit., 233; and *Byzanz* cit., 13: the imperial document was « die sinnfällige Trägerin und Uebermittlerin der kaiserlichen und damit letztlich göttlichen Befehle, der magisch auf den Stoff gebannte Willensausdruck des allmächtigen Kaisers ».

8. For further details see F. Dölger *Ibid.* For some observations cfr. also A. Michel *Die Kaisermacht in der Ostkirche* (Darmstadt 1959) 73-74.

material is so vast and so variegated that a full-scale study is not within the capability of any one scholar. Quite especially the ‹ Arengae › would suggest themselves as excellent means with and through which the general and fundamental ideas motivating governments can be reconstructed, but it would seem that their full heuristic value and importance has still not been adequately recognized: the professional diplomatists still cling too much to the external apparel at the expense of the internal substance so abundantly exhibited in the ‹ Arengae ›[9]. For it was in them that governments could set forth themes of a more general nature, such as reflexions on their functions, their scope and the basis of their authority, their intentions, their ‹ Staatslehre ›, for which no other or more suitable channels were at the disposal of governmental authorities. Private individuals wrote tracts and ‹ summae ›; tutors and prospective royal teachers wrote their ‹ specula regum ›; theologians and philosophers wrote ‹ libelli › ‹ quaestiones › ‹ summae ›, and the like; jurists wrote glosses and commentaries - but what other channel of exposition had the pope, had the king, had the emperor but the ‹ Arengae ›? That they had not the same liberty in stating their points of view as other writers had, and that this restriction forced their draftsmen to great conciseness, if not at times to the most economical and therefore easily misleading expressions, should be no reason to see in the ‹ Arengae › merely high-sounding and high-faluting verbiage: the subject of the ‹ Arengae ›, properly studied and handled, would surely be one of the most rewarding fields of study.

The m a l a i s e of diplomatists in particular and of administrative historians in general is that they fixedly stare at the purely outward features - and stop here, instead of asking themselves what it was that gave birth to these very same outward features and why they took particular shape. Of course, no serious historical study can be undertaken without diplomatic: the results obtained by it are a testimony to the ‹ Scharfsinn › and profundity of knowledge of the diplomatists, and historical scholarship has been immensely fructified and stimulated by diplomatic. But it would also seem that diplomatists tend to view their science as an end in itself, the demands of which are satisfied by the minute examination of purely external features. That this latter exa-

9. Cfr. H. FICHTENAU *Arenga: Spätantike und Mittelalter im Spiegel von Urkundenformeln* (Vienna 1957) ‹ Mitteilungen des Instituts für Oesterreichische Geschichtsforschung. Ergänzungsband, 18 ›. Cfr. alsoW. ERBEN *Urkundenlehre: Die Kaiser-und Königsurkunde des Mittelalters in Deutschland, Frankreich und Italien*, in *Handbuch der mittleren und neueren Geschichte*. Hgg. von G. BELOW and F. MEINECKE (Munich 1907) 339-340, with its emphasis on the « künstlerische Entfaltung... Antithesen, Wortspiele und Reime » etc. Surely, these external features are not really the only worth-while subjects of the Arengae? See further L. SANTIFALLER *Ueber die Verbal-Invokation in Urkunden*, in « *Sitzungsberichte der oesterr. Akademie der Wissenschaften. Phil.-hist. kl.* » 237 (1961) fasc. 2. But cfr. now the instructive paper by H. FICHTENAU *La situation actuelle des études de diplomatique en Autriche*, in « *BEC* » 119 (1962) especially 18 ss.

mination is essential and indispensable, goes without saying - but would not appear sufficient. Both administrative history and diplomatic would seem to suffer too much from the infectious disease of the Formelhafte: after all, ‹ formulae › are merely short-hand devices which outwardly express in often memorable and impressive ways mature and firmly fixed ideas. Differently expressed: ‹ formulae › are administrative devices symptomatically revealing the efficient operation and manipulation of a whole cluster of governmental ideas[10]. What is needed is the application of diplomatic to the recognition of governmental principles themselves. Wide vistas open themselves up for applied diplomatic.

When one confines oneself to the institutional history of the medieval papacy and papal diplomatic, it becomes clear that papal administration and administrative acts, notably its documents, offer a virtually inexhaustible reservoir for heuristic purposes. Not only is it the quantity of papal documents which gives confidence to the searching historian, but it is above all else their quality which provides an almost embarrassing wealth of material. They were on the whole exceedingly well drafted and conceived; and they reflect in a virtually unsurpassable manner the ideas, motives and aims of the papacy. Though much plea has been made concerning the Formelhafte in papal documents, here still less than anywhere else this plea has little force - unless one is prepared to say that the papacy in the Middle Ages was itself nothing but a ‹ Formel ›. But it would be difficult to maintain this assertion - and it is no less difficult to sustain the plea of the ‹ Formelhafte › in papal documents.

Let us take one or two examples. Between the election and the consecration of Gregory VII elapsed over two months. When one looks at the intitulation of the letters issued during this interval, one will see that their greeting formula contains a mere: « salutem in Christo Iesu »[11], but from the day of his consecration (29 June 1073) onwards we find the usual greetings: « salutem et apostolicam benedictionem »[12]. Here is a clear instance of the meaning and import of the episcopal consecration in its bearing upon a ‹ mere formula › - being a ‹ mere formula › it has not been noticed by those who have examined, diplomatically, the letters of Gregory VII. We are here obviously confronted by the employment of a diplomatic ‹ formula › which entirely depends upon something that has nothing to do with diplomatic or with institutional or administrative history, but solely with the ‹ potestas ordinis ›[13].

10. For some remarks bearing upon this point cfr. W. Ullmann in « *Studi Gregoriani* » 6 (1959) 229 ss., at 263-264.

11. *R*, I, 1-12.

12. *R*, I, 13 ss.

13. It is perhaps not without significance that P. Kehr *Italia Pontificia* III (Berlin 1908) 418 n. 27, dealing with the quite irregular letter of John of Gaeta (Gelasius II), has not noticed at all the peculiarity of the intitulation and the greeting formula: « Johannes, ecclesiae Romanae

There are no lengthy medieval tracts telling us about the position and function of the Pope between election and consecration, but on the other hand the inconspicuous and yet so carefully chosen language in the documents is more informative about the governmental function of the Pope than lengthy literary expositions[14]. Similar observations could be made about the dating employed in papal documents, and not far removed from this is the question of the beginning of the pontifical year, that is, the date of the election or of the consecration. Practices and the change of practices reveal here, as in other respects, the ideas and aims prompting the individual Pope. Why, to go further afield, did papal letters differ in their address to bishops and to kings and princes? Was the designation of a King as a ‹ filius › merely another ‹ formula › or did it signify something more? That these and similar expressions have served to distinguish the spurious from the genuine, is of course true[15], but this function of the diplomatic usage surely is not exhaustive, for it is, as we have said, a means to express in concentrated form the substance of an idea which in itself had nothing to do with a diplomatic ‹ formula ›.

If, for a moment, we direct our attention to the royal field, we shall also find that what claims to be a mere formula, has great heuristic value. An obvious instance is the designation of the King as ‹ Rex Dei gratia ›. The usual and virtually undisputed explanation of the formula is that it is no more than a royal Devotionsformel. One may well be tempted to ask whether this is all the royal intitulation is supposed to be? Is it not of some concern that the formula begins its triumphant career in the course of the eighth century? Is it really a mere coincidence that the earlier kind of kingship gives way just at that time to a theocratic kingship (which indeed brings forth the title) and that within this theocratic kingship the role of the ‹ populus › is radically altered, compared with its role in less sophisticated societies? The title could and did undergo considerable variations, attempting to add or refine the idea thus expressed. Hence ‹ per misericordiam Dei › is in course of time substituted for ‹ gratia Dei ›, and will change into the ‹ dispensante › or ‹ disponente gratia ›, until the apotheosis is reached in a rulership which is ‹ secundum voluntatem Dei Salvatoris › and finally in a Ruler who is ‹ servus

diaconus, nunc disponente in pontificem electus... salutem et apostolicam benedictionem » (P. MIGNE *Patrologia Latina* CLXIII, Paris 1850, 487). How can a mere deacon give an apostolic blessing? O. BLAUL in his *Studien zum Register Gregors VII*, in « *Archiv für Urkundenforschung* » 4 (1911), discussing the letters *R*, I, 1-12, has not apparently seen their diplomatic-doctrinal import. Similarly, L. SANTIFALLER *Quellen und Forschungen zum Urkunden- und Kanzleiwesen Gregors VII* (Città del Vaticano 1957) ‹ Studi e Testi, 109 ›, could have arrived at a more adequate dating of some letters, for instance, nos. 23 (d) and 27 (pp. 8, 12), if the intimate connexion between diplomatic and doctrine had been taken into account.

14. For some remarks cfr. W. ULLMANN, in « *Studi Gregoriani* » 6 (1959) 246 ss., 251 n. 8.
15. Cfr. already INNOCENT III, in *Extra* V, 20, 4 ss.

apostolorum›[16]. Do these so-called Devotionsformeln really only express, as has once been said, bombastic verbiage devoid of all meaning? Or do they not rather clearly manifest a whole governmental programme in so concise and succinct a manner that their brevity is easily deceptive? To have coined these terms would in itself appear to be a major intellectual achievement when one remembers how much thought had to be pressed into this short-hand device. To stop by saying that these additions to the title of a king are merely Devotionsformeln would amount to wilfully neglecting them as important ‹Erkenntnismittel› for governmental conceptions. There is in fact excellent confirmation for out point of view in the introductions to the one or the other epistolary collections and the *Notabilia de dictamine:* in a late thirteenth-century product of this kind we read:

> «Persone ecclesiastice majores, imperatores, reges, duces et consimiles in adiectivis dignitatum suarum debent semper gloriam dare Deo, ut fateantur se esse Dei munere id quod sunt»[17]

which reads like a paraphrase of the Pauline statement that is the fundamental pedigree of this theme[18].

Similar observations can be made about the papal Registers. Again, the administrative machinery of the papacy was extremely well served by the efficiency of the papal system of Registers, an administrative device adopted by the papacy from the late Roman administration. Although most of the papal Registers belonging to the earlier medieval period have been lost[19], from the outgoing twelfth century onwards they are all almost wholly preserved. Nevertheless, there is as yet no agreement about the purpose for which papal Registers were made and kept, nor about the principles adopted which determined which of the papal documentary output should be enregistered and which not. The problem of special Registers, such as the *Regestum super negotio Romani imperii* and the like, brings forth an additional crop of questions. The attempts so far made to bring light into this highly involved and intricate problem had, significantly enough, to rely on criteria which were not supplied by the Registers themselves, but by non-administrative sources.Perhaps the Registers provide the best proof for the view that administrative problems cannot solely be solved on a self-sufficient, that is, administrative, basis. If any worth-while solution of the Register problem can be attempted, it will

16. For details cfr. W. Ullmann *Growth of Papal Government in the Middle Ages* (London 1962²) 239 ss. and 247-248 (Henry II).

17. Ed. L. Rockinger *Ueber Briefsteller und Formelbücher* (München 1861) 33.

18. Cfr. infra at nota 27.

19. Except *R, V,* 1 and 2. Cfr. on this also L. Santifaller *Beiträge zur Geschichte der Beschreibstoffe im Mittelalter: mit besonderer Berücksichtigung der päpstlichen Kanzlei* (Graz-Köln 1953) ‹Mitteilungen des Instituts für Oesterreichische Geschichtsforschung. Ergänzungsbadn 161› 92 ss.

be on the basis of criteria extraneous to the Registers themselves: the subject-matter of the letters, the reasons for abbreviating the contents [20] and for the registration of items, such as incoming mail [21], which is an alien body in a papal Register, and so on. Why were certain items not registered at all, items, that is, which dealt with fundamental questions? [22] Here, as in other instances, assuredly administrative practice followed principles which were of a non-administrative provenance. Administrative history is applied history, or better, administration is the application of the principles of the government itself.

3.

That from the pontificate of Hadrian I in the second half of the eighth century a new period in papal diplomatic begins, cannot be mere coincidence. The two kinds of papal documents — the ‹ P r i v i l e g i a › and the ‹ L i t t e r a e › — form from now on the backbone of the papal Chancery's output. The two kinds are sharply divided both in contents and in the external make-up. The question that confronts the historical researcher is clear: why were there these two kinds of papal documents? And why were they so sharply differentiated?

The ‹ privilegium › is not an invention of the papal Chancery in the Middle Ages. The adoption of this term for a special kind of papal documents is itself a rather clear pointer to conceptions and ideas which in themselves have nothing to do with any chancery practice. Roman law was quite familiar with the peculiarity of a ‹ privilegium › [23], though it may be doubted whether the term also signified a special kind of document. Whilst in ancient Rome the term denoted the contents of a particular law rather than a document, the medieval papacy adopted the term both for the document itself conferring privileges as well as for the contents.

There can be little doubt that a good deal of Justinianean legislation could in fact very well be viewed, at least considering its substance, as ‹ privilegia ›.

20. Cfr., for example, Gregory VII's important letter in *R*, VIII, 21 which is enregistered without the quite significant matter contained in the recipient's copy, see the latter in Caspar's edition, 562-563.

21. For Gregory VII's *Register* see the items enumerated by L. SANTIFALLER *Beiträge zur Geschichte* cit., 95 n. 11; for Innocent III in his *R.N.I.* nos. 3, 4, 5, 6, 7, 8, 9, 10, etc.

22. For example, the very important decree of Eugenius IV dealing with the constitutional position of the cardinals (« Non mediocri dolore ») is not in the Registers; on this cfr. W. ULLMANN in *Medieval Studies presented to A. Gwynn* (Dublin 1961) 361 n. 12.

23. *D*, 50, 17, 196. Cfr. further *D*, 29, 1, 20; and 24; « privilegium fori » in *D*, 2, 5, 1, etc. For the privilegium cfr. also TH. MOMMSEN *Abriss des römischen Staatsrechts* (Leipzig 1893) 319-320 (‹ lex rogata ›).

The hallmark of his laws was — and a glance at his *Novellae* will confirm this — that to certain institutions or groups of persons or certain office holders rights were given which they would not have possessed without the particular legislation. What his laws make clear is that they are the unadulterated expression of the descending-monarchic point of view. The ‹ voluntas principis › found in his laws eloquent expression: so many of his *Novellae* may well appear as ‹ privilegia › writ large [24].

The essential features of these enactments— the conferment of rights which did not pre-exist and which would not have come into being without the express will of the law-creator — can also be recognized in the papal ‹ privilegia ›. To begin with, they manifest by virtue of their contents the expression of the will of the pope relative to the position and function of those to whom the ‹ privilegium › is addressed. The ‹ privilegia › are the most persuasive symptoms of the existence of a monarchic will. Vice-versa, the recipient of a ‹ privilegium › had, again by virtue of its contents, no such rights before they were conferred by it. To ask for a ‹ privilegium › and to receive it, proves that there was a subject, an U n t e r - t a n who, because he did not enjoy the rights he asked for, now received them as a result of the exercise of the will of a ‹ superior ›. The two fundamental features of every ‹ privilegium › are, first, that the recipient had no such rights as were g i v e n to him in the ‹ privilegium › before it was issued; and secondly, that these rights now conferred contained a concession on the part of the ‹ superior ›. The very idea of a concession militates against the assumption that the recipient of a ‹ privilegium › had a right to claim the things conceded to him. Had he had them, there would have been no need for him to ask for the concession in the shape of a ‹ privilegium ›.

It is the e x c e p t i o n a l i t y of the ‹ privilegium › which is perhaps its most characteristic feature, exceptionality in so far as the common law (the ‹ jus commune ›) was set aside in favour of a group of persons or of institutions, and so forth. This feature is also at the same time a clear symptom of the existence of an authority that is in a position to set aside the law: perhaps no other feature so eloquently testifies to the function of the pope as standing outside and above the law. But only he can stand above the law who is not only ack-

24. It is of some interest to note here the ancient Roman antithesis between ‹ l e g i s l a t i o › and ‹ l e g i s d a t i o › (about this cfr. W. ULLMANN *Principles of Government* cit., 125-126) and furthermore the development which took place during the principate when a number of issues requiring legislation came into the hands of the emperor who created law in the shape of the ‹ leges datae › without the need of consulting other bodies; cfr. TH. MOMMSEN *Römisches Staatsrecht* II 2 (Leipzig 1887) 888 ss. Cfr. also F. DE MARTINO *Storia della Costituzione Romana* II (Napoli 1955) 347 ss., and E. MEYER *Römischer Staat und Staatsgedanke* (Darmstadt 1961) 419 ss. For the general development during the imperial period cfr. A. MAGDELAIN *Auctoritas principis* (Paris 1947) 77 ss.

nowledged as such, but also who has the ‹ gubernacula ›, is, in other words, a monarch in the literal meaning of the term. That in the Middle Ages the Pope had assumed this position, cannot be doubted. What the chancery product of a ‹ privilegium › makes clear is that the Pope is and acts as a monarchic ‹ gubernator › who is ‹ legibus solutus › or, in the language of the Papacy itself, who ‹ a nemine judicatur ›. The existence of such a kind of papal document as the ‹ privilegium › is in fact and in theory an infallible symptom of a fully-fledged ‹ S t a a t s l e h r e ›, according to which the monarch alone has the right to change the law: neither could custom or usage achieve the same result nor could any other body or authority. Moreover, the contents of a ‹ privilegium › leave no room for doubt that not only does the Pope stand above the law, but that he also stands above the entity entrusted to him: there are no autonomous rights in the ‹ congregatio fidelium ›, because — according to papal conceptions — it has come into being as a result of the Pope's display of authority and power [25]: this ‹ congregatio fidelium › was said to have derived its whole substance and essence from papal volition. Not only can he change the law, but he can also modify the incidence of the law in specific cases - through issuing a ‹ privilegium ›.

What therefore the ‹ privilegium › essentially signifies is the exercise of the papal good will or of the Pope's ‹ gratia ›. Without the ‹ gratia › of the pontiff it was impossible to obtain any concession or any rights, in other words, the papal ‹ gratia › and the papal ‹ privilegium › are one and the same thing, seen from different angles. Evidently, the concept and idea of this papal ‹ gratia › has very little in common with the theological concept of ‹ gratia ›, except its name. But as so much else in papal practice this too was not a conception that was invented by the papacy [26]. But the connoisseur of papal documents will also have realized the crucial importance which the concept of ‹ gratia › assumed in the working of the Papacy as an institution. The very existence of a ‹ privilegium › demonstrates the awareness of the papacy as a governmental institution, because through this vehicle the papal ‹ gratia › could alone be suitably made known. The solemnity which was attached to

25. Cfr., for instance, in the fifth century Innocent I, *Ep.* 29 in P. MIGNE *Pat. Lat.* cit., XX 583; or Clement V in the fourteenth century, cited in *Texte und Untersuchungen zur Geschichte der altchristlichen Literatur* 64 (Berlin 1957) 161 n. 1.

26. Within the ‹ Urkundensprache › it seems that the term ‹ gratia › makes its unheralded entry in the *Formulae* of Marculf (in *MGH Form:* no. 13, 14 ss.) or *Cartulary of Sens* (*Ibid.* no. 18, 121). One of the earliest instances in which the term ‹ d i v i n u s f a v o r › (in this context equivalent in meaning with ‹ gratia ›) was used, seems to have been in the *Edict of Milan.* In it Constantine said: « Hactenus fiet, ut... d i v i n u s iuxta nos f a v o r, quem in tantis sumus rebus experti, per omne tempus prospere successoribus nostris cum beatitudine publica perseveret ». In the same context he spoke of « nostra benevolentia »; cfr. for the text C. MIRBT *Quellen zur Geschichte des Papsttums* (Tübingen 1924) no. 88.

the document, was only apt to bring out the favours — the ‹ favores › — conceded: the recipient was suitably shown how much he was distinguished by the papacy which conferred on him rights he had not possessed before, and above all the right not to be encompassed by the otherwise enforceable law in the individual case. All this was of course merely the institutional and administrative application of the descending-theocratic theme of government and law. Just as the Papacy operated with the thesis that all rulership was, in the last resort, mediated by the Pope [27], so were the privileges conferred in the last resort divine favours mediated through the Papacy and transacted with appropriate solemnity. This is the concrete application of a deeply Christian theme that the individual Christian had no r i g h t s to anything, but could only ask for favours: « Gratia Dei sum id quod sum » St. Paul had declared, and it was on this theme that the papacy had developed its governmental principles which found practical expression in even such mundane matters as the issuance of a ‹ privilegium ›.

The kind of document which partly supplanted the solemn ‹ privilegium › was the ‹ littera de gratia › or the ‹ littera beneficialis › [28]. The very name is a good confirmation of the point of view here propounded. As regards function little difference can be seen between the ‹ privilegium › and the ‹ littera de gratia › [29]. Both kinds confer rights — privileges, in other words — which had not been in existence before; both granted rights or confirmed them to which the recipient had no claim and for which he had to enlist the papal ‹ gratia ›. In course of time the ‹ litterae de gratia › were also largely those the wording of which had to be approved by the Pope personally and they were therefore also called ‹ litterae legendae ›: it was these « quae d e g r a t i a impetrantur a nobis » [30]. What is of quite especial interest in this context is that the ‹ litterae de gratia › were technically called ‹ tituli ›, a nomenclature which excellently brings into relief the theme that they granted a legal title-deed, a ‹ Rechtstitel ›, where there had been none before [31]. These two kinds of documents issued by the papacy, are therefore perfect examples of how much papal governmental principles are reflected in administrative acts: the documents are a faithful mirror of underlying conceptions.

27. For details cfr. my *Principles of Government* cit., 57 ss.

28. Cfr. the Speculator, *Speculum Juris* (Basle 1574) II, 1, 4; 407 no. 7.

29. For the most recent discussion cfr. P. Herde *Beiträge zum päpstlichen Kanzlei- und Urkundenwesen im 13. Jahrhundert* (Kallmünz 1961) ‹ Münchener Historische Studien. Abteilung Geschichtliche Hilfswissenschaften, 1 › 57 ss.

30. *Register of Innocent IV.* Ed. E. Berger, no. 7295, cit. by P. Herde *Beiträge* cit., 55; here also the definition by Guala Bichieri who called the ‹ Litterae legendae › those « quae e x b e n e f i c i o papae impetrantur ».

31. For some fine remarks on ‹ gratia › in ‹ Privilegia › cfr. Baldus *Consilia* (Lugduni 1580) Pars I, Cons. 491 p.t.

That is not all. Although a certain stereotyped composition of the ‹ Arengae › became in course of time the accepted practice, for special kinds of ‹ privilegia ›, for instance for confirmation of monastic privileges, the ‹ Arengae › themselves leave no margin for any doubt that the Pope speaks here as an authority capable of changing and abolishing the law. The ‹ Arangae › are more fully developed in the ‹ privilegia › than in the ‹ litterae de gratia › and allow us a welcome insight into the governmental conceptions of the papacy. What, in short, emerges from the ‹ Arengae › of the ‹ privilegia › is that the Pope is, to all intents and purposes, a ‹ superior › who gives the law and therefore can also alter, modify or even do away with the Common law. There is probably no better ‹ Erkenntnismittel › for assessing the basic papal governmental conceptions than the ‹ Arengae › in the ‹ privilegia ›. The ordinary ‹ litterae de justitia › left little room for the exposition of general themes, such as we find liberally propounded in the ‹ litterae de gratia › and the ‹ privilegia ›. One can consequently say that the ‹ privilegium › — and to a certain extent also the ‹ littera de gratia › — is on the one hand the vehicle of an authority that has ‹ superioritas › → ‹ soveranitas › → ‹ souveraineté › → ‹ soveranità ›, because only a Ruler who stands above the law is not bound by it and therefore can change it or make it inapplicable in the individual case, and on the other hand, this same vehicle provided also the channel for setting forth the very ideas relating to the sovereignty of the Pope. The usual definition of a ‹ privilegium › as a «lex privata et contra jus commune» entirely bears out our point of view [32].

The topic of the Pope's sovereignty warrants a few observations directly linked with the kind of documents issued. The solemn ‹ privilegia › are characterized by the subscriptions of the Pope and a greater or lesser number of Cardinals. Although the latter functioned as witnesses and not as sharers of the Pope's plenitude of power (that is, of his sovereignty), it was nevertheless from the end of the eleventh century onwards, most likely as a result of the turbulent years of Gregory VII's pontificate, that the claim was raised by the Cardinals that they actually did share in the Pope's sovereignty [33]. They constucted a consent to the papal disposition and maintained that because they subscribed the ‹ privilegium ›, they were in agreement with it as a result of previous consultation. In other words, the cardinalitian point of view was that because of their signatures on the ‹ privilegium ›, they partook in the Pope's plenitude of power, with the consequence that the sovereignty manifesting itself in the ‹ privilegium › belonged, not to the Pope, but to the Roman Church or to the ‹ curia › [34]. This claim could be raised all the more

32. Gl. ord. ad *Extra*, I, 3, 7.

33. See especially the cardinals who had seceded from Gregory VII in *MGH Libelli de Lite* II 418, 419; etc. Cfr. also « *Studi Gregoriani* » 4 (1952) 120-121.

34. Cfr. J. B. SÄGMÜLLER *Die Tätigkeit und Stellung der Kardinäle bis Papst Bonifaz VIII*

plausibly, as in a number of instances the cardinals added to their signatures some statement denoting consent [35]. It is nevertheless worthy of note that no ‹ privilegium › of Gregory VII seems to be extant in which the Cardinals appear as signatories and, furthermore, that from Innocent II onwards cardinal signatures have no addition, but have the simple « subscripsi ».

The development of the ‹ littera de gratia › is usually attributed to the great increase of curial business which made advisable a simplification: the ‹ privilegia › with their ornamentation, cumbrous lay-out and the necessity to give minute attention to every detail, are said to have become inconvenient and a simpler kind of document was evolved, that is, the ‹ littera de gratia › or the ‹ titulus › which was to fulfill a function similar to that of the ‹ privilegium ›. No doubt, this explanation has a good deal in its favour, though it may tentatively be suggested that this may not be the whole explanation. It is certainly correct to say that the ‹ littera › was simple enough to be executed, but what, diplomatically, distinguished it from the ‹ privilegium › was the absence of all signatures: what, diplomatically, remained was the tall lettering of the Pope's name whose initial was ornamented and the rest floriated. This accentuation of the Pope's name and the absence of Cardinals' signatures is not, I think, without deeper significance. On the one hand, the papal name replaces all the signatures hitherto appended to the document itself, but now suitably stressed, it impresses itself as a most conspicuous feature on the reader of the ‹ littera ›. On the other hand, there could be no doubt any more that the cardinals had no share whatsoever in making the grant contained in the ‹ littera de gratia ›: in no other way could the papal ‹ gratia › so exclusively be shown than in this ‹ littera de gratia ›; equally, in no other way could papal sovereignty be more convincingly demonstrated. The only individual that did appear in the document was the Pope himself - a point which, though in substance assuredly already in the ‹ privilegium ›, was apparently not sufficiently clear to remove all ambiguities about the sovereign position of the Pope alone. The significance of the existence of the ‹ littera de gratia › next to the ‹ privilegium › is that, although both pursue similar functions, the former brings out the sovereign function of the Pope in a much more accentuated and demonstrative form than the latter: above all, no doubt could any more emerge about the possible sharing of the papal sovereignty by the cardinals. The tensions within the ‹ curia ›, especially in the thirteenth century, are faithfully mirrored in the rapidly increasing importance and acceleration of the quantitative output of the ‹ litterae de gratia ›. The problem

(Freiburg 1896); W. ULLMANN *The legality of the papal electoral pacts*, in « *Ephemerides Juris Canonici* » 12 (1956) 246 ss.; idem in « *Studi Gregoriani* » 4 (1952) 111 ss. and in *Essays presented to A. Gwynn* cit., 359 ss.

35. Cfr. J. B. SÄGMÜLLER *Die Tätigkeit und Stellung* cit., 216 n. 4, especially J. L. 4016, 4432, 5403, 6861, 7147.

of the cardinalate was a very delicate and tricky one for the medieval papacy, and one of the means to escape from the consequences of cardinalitian claims may well have been the administrative device of the ‹ littera de gratia › [36].

We can go a step further. The tensions within the ‹ curia ›, partly between the Pope and the College of cardinals, partly within the College itself [37], reached their high-water mark by the mid-thirteenth century. It is, one may reasonably assume, not a mere coincidence that another new administrative device was employed by the papacy during precisely this period, a device which gained more and more currency, that is, the Bull in the technical sense [38]. Like the ‹ littera de gratia › it lacked all signatures, but, unlike the former, it was a far more solemnly executed document which resembled the ‹ privilegium › more than a ‹ littera ›. Above all, the ‹ privilegium › as the progenitor of the Bull is quite clearly discernible in the protocoll: whilst the former is characterized by the employment of the « In perpetuum », the latter had: « Ad futuram rei memoriam » or also « Ad perpetuum rei memoriam » [39]. Also, diplomatically (and paleographically) the Bull adopted some characteristic features of the ‹ privilegium ›, above all, the elongata, the appopriate emphasis of the initials in the text and in the ‹ sanctio › and ‹ comminatio ›. The seal hangs on a silk bundle. A study of the contents of the Bulls unmistakably reveals the importance which this kind of document was to assume in course of time. One may go so far as to say that the Bulls not only were to oust the ‹ privilegia ›, but also served as the channels by which the legislative omnipotence of the Pope manifested itself in a most conspicuous manner. In other words, the Bull became a highly appropriate vehicle for expressing the Pope's sovereignty: no doubt could exist that the dispositions of the Bulls incorporated exclusively the sovereign will of the Pope. Further, whilst previously the ‹ privilegia › contained exceptions to, and modifications of, the Common law,

36. The cardinals tried later another way to restrict the pope's sovereignty, cfr. *Ephemerides Juris Canonici* cit. 246 ss. Whether the reference, in the context, to « de fratrum nostrorum consilio » is a remnant, remains to be seen, cfr. J. B. SÄGMÜLLER *Die Tätigkeit und Stellung* cit. 73-74, 216-217.

37. For these cfr. C. WENCK in « *Göttinger Gelehrte Anzeigen* » (1900) 139 ss. and above all J. B. SÄGMÜLLER in « *Theol. Quartalschrift* » 80 (1898) 597 ss.; 83 (1901) 45 ss.; 88 (1906) 590 ss.; cfr. also B. SÜTTERLIN *Die Politik Kaiser Friedrichs II. und die römischen Kardinäle* (Heidelberg 1929) and W. ULLMANN *The legality of the papal electoral pacts* cit.

38. For this cfr. H. BRESSLAU *Handbuch der Urkundenlehre* I (Leipzig 1912) 82-83; L. SCHMITZ-KALLENBERG *Papsturkunden*, in A. MEISTER *Grundriss der Geschichtswissenschaft* (Leipzig 1913) 100-101.

39. There was some vacillation in Innocent IV's pontificate concerning the actual wordnig: it changed from « Ad rei memoriam sempiternam » to « Ad observantiam et memoriam perpetuam » and « Ad perpetuam rei gestae memoriam », cfr. *Bullarium Romanum* III (Augustae Taurinorum 1858) 511, 537, 586. There is, however, the isolated case of Gregory IX, *Ibid.* 452, no. XXIII, of 18 March 1231, with the formula « Ad futuram rei memoriae ».

the Bulls, whilst originally also serving this purpose, were employed to state new law. In fact, the really important and significant expressions of the Pope's sovereignty flowed through the Bulls. It may tentatively be suggested that the absence of any ‹ inscriptio › in many Bulls — simply: « ... servus servorum Dei ad perpetuam rei memoriam » — was to bring the supreme sovereign will of the Pope into the clearest possible relief.

There is one more observation. Both kinds of ‹ litterae › (i.e. ‹ de gratia › and ‹ de justitia ›) as well as the Bulls had the seal appended, the former by a bundle of silk cord, hence also called ‹ litterae cum filo serico ›, the latter by a hemp cord, hence ‹ litterae cum filo canapis ›[40]. Why this difference in fixing the seal? Several suggestions have been put forward: silk was used, because the ‹ littera de gratia › containing a privilege and the Bull in the technical sense were permanent — vouched by the « Ad futuram rei memoriam » — and hence the question of preservation arose; hemp was used, because the ‹ mandatum › was an ‹ ad hoc › matter and no problem of preservation could reasonably arise. Another explanation is that silk, the softer material, represented grace, whilst hemp, the cruder or rougher material, represented justice. Whatever the value of these explanations may be, it may again be tentatively suggested that the Grace Letters and the Bulls used silk to denote the uniqueness, the singularity and exceptionality of the dispositions made: more so than now, silk was then a very expensive material, and the exceptionality of the disposition was to be matched by the exceptionality of hanging a seal on so expensive material as silk. These considerations cannot apply to mere Judicial letters which deal with a clarification of the existing law (and not, as the gratial letters do with a disposition ‹ contra jus commune ›) or with implementing the appropriate machinery with a view to applying existing law, to settle a dispute within the framework of the existing law, and so on. There was, from the juristic point of view, nothing exceptional in all this - and this ordinariness is reflected in the material on which the seal hang. The inferential and heuristic character of these administrative devices seems to be obvious.

The reason for the absence of the diplomatic ‹ sanctio ›, ‹ comminatio › and of all solemnity in the ‹ litterae de justitia › is not difficult to understand: they are not manifestations of the exercise of sovereign power and authority; on the contrary, they move entirely within the framework of the already existing law and are designed to strengthen the latter instead of, as the gratial letters do, setting it aside, or as the Bulls do, laying down new law. Here again, the similarity between Gratial Letters, the Bulls and the ‹ privilegia › is striking:

40. For the more correct designation as ‹ Litterae cum serico › see P. Herde *Beiträge* cit., 50 at note 9, who observes that the ‹ sericus › was made up by a bundle of silk strings. Cfr. also the Chancery instruction from Boniface VIII's time: « Est notandum, quod litterae domini papae aliae bullantur cum serico, aliae cum filo canapis », L. Delisle in « *BEC* » 19 (1858) 23; C. Paoli *Diplomatica*. Ed. G. C. Bascapè (Firenze 1942) 40 n. 2.

these have the diplomatic context with its ‹ sanctio › and ‹ comminatio ›. Since the existing law was to be modified or changed altogether in special circumstances, it was in fact necessary to incorporate in the appropriate form the legislative command to obey this exceptional law. This, too, is intimately connected with the exercise of sovereign authority revealed in a m e r e administrative device.

What is of great significance is the ‹ comminatio › or penal clause in the context. The commonly used wording was this:

> « Si quis autem hoc attemptare praesumpserit i n d i g n a t i o n e m omnipotentis Dei et beatorum Petri et Pauli apostolorum eius se noverit incursurum ».

This is as little a mere ‹ formula › as any other part of a papal document. The meaning of this penal clause seems clear enough: tampering with the external make-up of a ‹ privilegium › or a gratial letter or a Bull or infringing its contents or in any way disregard it, entails the divine and apostolic ‹ indignatio ›. We are here in fact presented with the reverse side of the underlying conception of this kind of document. It will be recalled that every ‹ privilegium › and gratial letter was the effluence of papal ‹ gratia ›, of the Pope's good will, of his ‹ favor ›: the reverse side is the (papal) ‹ indignatio ›, the divine and apostolic wrath in case of an infringement. Just as in the granting of a ‹ privilegium › the Pope mediated the divine will and ‹ gratia ›, in the same way he can withhold any favours, any ‹ beneficia ›, in short any ‹ gratia ›, if his dispositions are set aside. The theme of ‹ gratia-indignatio ›, of grace-disgrace, of ‹ Gnade-Ungnade ›, is essential to the exercise of papal sovereign power. Just as divinity had vouchsafed or deigned or condescended to grant the disposition — ‹ ut digneris › — through the medium of the Pope, so will divinity withhold — ‹ indignatio › — granting any privileges to those who have the temerity of disregarding the special law granted. What the penal clause in a reverse way makes clear is that the recipient had no ‹ right › to claim the privileges conceded to him - the reverse of ‹ indignatio › is the ‹ dignatio › or ‹ gratia ›[41].

These few instances here enumerated may serve as illustrations of our thesis that administrative history has an infinitely wider scope than is commonly attributed to it. Chancery products by their very nature have to be somewhat stereotyped and have to correspond to certain external features, but they also

41. All this is of course intimately bound up with the theory of concession, cfr. supra at n. 26, and the prayer texts themselves, too, make this abundantly clear when they begin: ‹ Concede ›; ‹ praesta ›; ‹ quaesumus ›; ‹ da ›; ‹ exaudi ›; ‹ suscipe ›; ‹ praetende ›; ‹ respice ›; ‹ infunde ›; and so on. I hope to report on this in a different context. On the subject of the penal formulae cfr. J. STUDTMANN *Die Poenformel der mittelalterlichen Urkunden*, in « *Archiv. für Urkundenforschung* » 12 (1932) 251 ss., where also the older literature will be found.

have an additional function in so far as they are the means or vehicles through which basic conceptions of government are put into practice. Notably medieval documents and here again quite especially papal documents serve as excellent ‹ Erkenntnismittel ›: they permit the discerning student to infer from an allegedly mere formula a great deal of the presuppositions, maxims, doctrines, ideas, upon which the government in question rests. Admittedly, it is the very conciseness of medieval documents which may be misleading, because they hide the cluster and welter of ideas that has gone into the coinage of this or that term or into the composition of this or that phrase. But the research that has in recent years been made concerning the recognition of fundamental governmental conceptions in the Middle Ages, would assuredly derive great profit if administrative history were released from its self-imposed limitations and be made to render service to historical scholarship in the wider sense. The presupposition, however, is, that the unfortunately so prevalent view of the mere ‹ Formelhafte › in medieval documents is discarded and the ‹ formulae › be taken what they were intended to be: precise and concise expressions, short-hand devices of basic governmental conceptions. By virtue of their conciseness and precision ‹ formulae › are indicative and symptomatic of the ideas which give birth to them. They are perhaps the most mature means by which the thoughts of acting governments can be recognized. They can be harnessed to the task of assisting the process of recognizing the underlying assumptions of a particular ‹ Staatslehre ›. Finally, administrative and institutional history itself might well profit a good deal from taking into account those very assumptions, with the result of mutual benefits and a much desired integration of the historical sciences themselves.